

WYC:RMT  
F#:2010R01397

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**M-10-1043**

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IN THE MATTER OF AN APPLICATION FOR  
SEARCH WARRANTS FOR:

AFFIDAVIT IN SUPPORT OF  
SEARCH WARRANTS

THE PREMISES KNOWN AND DESCRIBED AS  
ELECTRONIC MAIL ADDRESSES  
"marty.donato@yahoo.com" and  
"tattoonyc69@gmail.com"

(T. 18, U.S.C., § 836)

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EASTERN DISTRICT OF NEW YORK, SS:

ISMAEL HERNANDEZ, being duly sworn, deposes and says  
that he is a Special Agent with the Bureau of Alcohol, Tobacco,  
Firearms and Explosives ("ATF"), duly appointed according to law  
and acting as such.

Upon information and belief, there is probable cause to  
believe that there is located in THE PREMISES KNOWN AND DESCRIBED  
AS ELECTRONIC MAIL ADDRESSES "marty.donato@yahoo.com" and  
"tattoonyc69@gmail.com" (the "SUBJECT EMAIL ACCOUNTS")  
subscriber/profile information, email transmission information,  
subject headings, to/from information, folders and email content  
(including all of the foregoing for deleted messages), as  
described more fully in Attachment A, which constitute evidence  
of the unlawful transportation of fireworks into the State of New  
York contrary to Title 18, United States Code, Section 836.

The source of your deponent's information and the grounds for his belief are as follows:<sup>1</sup>

1. I have been a Special Agent with the ATF for more than nine years. The information contained in this affidavit is based on my own investigation as well as information provided to me by other law enforcement officials. I make this affidavit in support of an application for a search warrant for information contained in the SUBJECT EMAIL ACCOUNTS.<sup>2</sup> The specific information to be searched and seized is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A).

2. This Court has jurisdiction to issue the requested warrant because it has "jurisdiction over the offense being investigated," and thus is a "court of competent jurisdiction." See 18 U.S.C. §§ 2703(a), 2711(3).

3. In late June 2010, an NYPD police officer, acting in an undercover capacity (the "U/C"), indicated on a

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<sup>1</sup> Because this affidavit is submitted for the limited purpose of establishing probable cause for a search warrant, I have not set forth each and every fact learned during the course of the investigation.

<sup>2</sup> On August 24, 2010, the U.S. Attorney's Office for the Eastern District of New York submitted formal requests to Yahoo! Inc. and Google pursuant to Title 18, United States Code, Section 2703(f), for the preservation of all stored communications, records and other evidence pertaining to the SUBJECT EMAIL ACCOUNTS.

public internet site that she was interested in buying fireworks for a block party that she was hosting in Staten Island on July 4, 2010. On or about June 28, 2010, MARTY DONATO sent the following email to the U/C from the email address "tattoonyc69@gmail.com":<sup>3</sup>

Hey what's up are you still looking for fireworks? I have what they call the new yorker its a box of assorted fireworks its very cool. its 120 a box. Let me know.

That same day, DONATO sent the following email to the U/C from the email address "marty.donato@yahoo.com," again responding to the U/C's request for fireworks:

I have some if you need. Let me know.

4. In several subsequent emails with the U/C, in which DONATO used both of the SUBJECT EMAIL ACCOUNTS, he indicated to the U/C that he had in his possession multiple boxes of assorted fireworks, called the "New Yorker," that he was willing to sell to the U/C for \$120 per box. DONATO described those fireworks assortments in an email sent from "marty.donato@yahoo.com" on or about June 28, 2010 as follows:

Includes: Aerial repeaters, cones, firecrackers, fountains, ground blooms, jumping jacks, reloadables, rocket roman candles, snaps, space jets, sparklers and tanks. Contains 929 pieces for you to light!

DONATO also emailed the U/C two photographs of the "New Yorker"

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<sup>3</sup> The name displayed with this email address was "Marty DONATO."

fireworks assortment from that email account.

5. DONATO ultimately agreed to sell the fireworks to the U/C in Staten Island on July 2, 2010. On or about that date, DONATO and the U/C exchanged multiple emails, with DONATO using the email address "marty.donato@yahoo.com" to finalize the details of their meeting.

6. After arriving to meet with the U/C in Staten Island, DONATO opened the rear doors of the van he was driving and showed the U/C boxes containing a variety of fireworks, including three boxes of "New Yorker" fireworks assortments. Thereafter, DONATO was placed under arrest.

7. Following DONATO's arrest, the van, which was registered to DONATO, was driven to a police precinct where an inventory search of the van was conducted. During a subsequent inventory search, in addition to the fireworks, NYPD officers discovered: (1) three gravity knives, including a very large double-bladed gravity knife measuring more than a foot in length; (2) an electronic stun gun; and (3) an expandable baton. Additionally, beneath the driver's side sun visor in the front passenger section of the van, officers found a fake parking plaque which identified the defendant's van as a police vehicle belonging to the District Attorney's Office for New York County.

8. While conducting the inventory search of the defendant's van, NYPD officers opened a compartment above the

rear view mirror in the front passenger section of the van. Concealed in the compartment was a Kel-Tec P-32, .32 caliber semi-automatic pistol. There was a magazine in the pistol which contained six live rounds of ammunition.

9. In addition, NYPD officers found a receipt for fireworks from a store called "Phantom Fireworks," located in Pennsylvania. DONATO's name appeared on that receipt, reflecting that DONATO had purchased a total of six boxes of "New Yorker" fireworks assortments on or about July 1, 2010 from that store.

10. Notably, DONATO did not have a license to either possess or sell fireworks in the State of New York. In addition, New York Penal Law Section 270.00(2)(a)(i) states, "any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor."

11. On January 22, 2010, DONATO pleaded guilty to the offense of conspiracy to distribute and possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846. DONATO is currently being held in federal custody pursuant to a supervised release violation in that case stemming from his arrest on or about July 2, 2010. He is due to be sentenced by the Honorable Dora L. Irizarry on October 15, 2010.

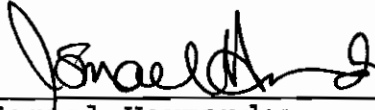
12. On August 19, 2010, a grand jury in the Eastern District of New York returned a two-count indictment charging

DONATO with possession of a firearm after having been previously convicted of a felony, contrary to Title 18, United States Code, Section 922(g), and unlawful transportation of fireworks into the State of New York, contrary to Title 18, United States Code, Section 836. That case is currently pending before the Honorable Eric N. Vitaliano.

13. Based on these events, DONATO's use of the SUBJECT EMAIL ACCOUNTS to arrange the sale of fireworks with the U/C, and the fact that there are at least three boxes of "New Yorker" fireworks assortments that DONATO purchased that are not accounted for, there is probable cause to believe that the SUBJECT EMAIL ACCOUNTS contain evidence of the unlawful transportation and sale of fireworks into the State of New York contrary to Title 18, United States Code, Section 836.



WHEREFORE, your deponent respectfully requests that a search warrant be issued authorizing agents to search THE PREMISES KNOWN AND DESCRIBED AS ELECTRONIC MAIL ADDRESSES "marty.donato@yahoo.com" and "tattoonyc69@gmail.com" and therein to seize the items described in Attachment A, all of which constitute evidence of the unlawful transportation of fireworks into the State of New York contrary to Title 18, United States Code, Section 836.

  
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Ismael Hernandez  
Special Agent  
Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Sworn to before me this  
10<sup>th</sup> day of September, 2010

  
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Attachment A

I. Service of Warrant and Search Procedure

A. The officer executing this warrant shall effect service by any lawful method to Yahoo! Inc. and Google.

B. To minimize any disruption of computer service to innocent third parties, the officer executing this warrant shall direct Yahoo! Inc. and Google employees to locate, isolate, and create an exact duplicate of all records and contents of electronic mail associated with the applicable subscriber account described in Section II, below.

C. The term "electronic mail" includes all of the items described in this Attachment A in whatever form and by whatever means they may have been created or stored, including without limitation any electronic or magnetic form (such as hard drives, floppy disks, CD-ROMs, backup tapes, and printouts or readouts from any such media), and any handmade, mechanical, or photographic form (such as writing, printing, typing or photocopies).

D. Yahoo! Inc. and Google employees will provide the exact duplicate in electronic form (or in printouts if the original records are not in electronic form) of the applicable electronic mail messages described in Section II below to the agent who serves this search warrant, who need not be present at the location specified in the warrant during Yahoo! Inc.'s and Google's retrieval of records, as permitted in 18 U.S.C. § 2703(g).

II. List of Items To Be Seized

All records and other stored information pertaining to the categories specified below, in whatever form kept, in the possession or control of Yahoo! Inc. and Google, for the email accounts "marty.donato@yahoo.com" and "tattoonyc69@gmail.com":

1. all subscriber information (including subscriber names, addresses, telephone numbers, dates of birth, social security numbers, account numbers, status of account, duration of account and method of payment);

2. a complete log file of all activity relating to the accounts (including dates, times, method of connection, port, dial-up and/or location) from ~~April~~ <sup>June 26</sup> 9, 2010 to ~~July~~ <sup>July 4</sup> 9, 2010; and

3. all opened, unopened, deleted, sent, received and



draft email, including any attachments, sent by or received by the accounts, whether saved or deleted, whether contained directly in the email accounts or in a customized "folder," from ~~April 9~~, 2010 to ~~July 9~~, 2010 constituting evidence of the unlawful transportation of fireworks into the State of New York contrary to Title 18, United States Code, Section 836.

June 26

July 4